

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

KALOMA CARDWELL,

*Plaintiff,*

v.

DAVIS POLK & WARDWELL LLP,  
THOMAS REID, JOHN BICK, WILLIAM  
CHUDD, SOPHIA HUDSON, HAROLD  
BIRNBAUM, DANIEL BRASS, BRIAN  
WOLFE, and JOHN BUTLER,

*Defendants.*

19 Civ. 10256 (GHW)

**DECLARATION OF SUSANNA M. BUERTEL**

Susanna M. Buertel affirms and states as follows:

1. I am a Partner at the firm Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul, Weiss”), which represents defendants in the above-captioned action. I respectfully submit this Declaration in support of defendants’ Memorandum of Law in Support of their Motion for Summary Judgment and Rule 56.1 Statement.

**Deposition Transcripts**

2. Attached as Exhibit 1 is a true and correct copy of excerpts from the March 23 and 24, 2021 deposition testimony of plaintiff Kaloma Cardwell.

3. Attached as Exhibit 2 is a true and correct copy of excerpts from the April 8, 2021 deposition testimony of Sharon Crane.

4. Attached as Exhibit 3 is a true and correct copy of excerpts from the April 15, 2021 deposition of Renee DeSantis.

5. Attached as Exhibit 4 is a true and correct copy of excerpts from the April 16, 2021 deposition testimony of Thomas Reid.

6. Attached as Exhibit 5 is a true and correct copy of excerpts from the April 13, 2021 deposition testimony of John Bick.

7. Attached as Exhibit 6 is a true and correct copy of excerpts from the April 12, 2021 deposition testimony of Harold Birnbaum.

8. Attached as Exhibit 7 is a true and correct copy of excerpts from the April 14, 2021 deposition testimony of Sophia Hudson.

**Expert Report**

9. Attached as Exhibit 8 is a true and correct copy of the Expert Report of Professor Justin McCrary, Ph.D.

**Cardwell's Reviews and Related Documents**

10. Attached as Exhibit 9 is a true and correct copy of the performance reviews saved in Davis Polk's Lawyer Review System for Kaloma Cardwell, Bates stamped DPW\_SDNY-000144354-DPW\_SDNY-000144394.

11. Attached as Exhibit 10 is a true and correct copy of a Data Export from Davis Polk's Lawyer Review System, Bates stamped DPW\_SDNY-000000818.

12. Attached as Exhibit 11 is a true and correct copy of Kaloma Cardwell's recorded hours at Davis Polk, Bates stamped DPW\_SDNY-000143583.

13. Attached as Exhibit 12 is a true and correct copy of Kaloma Cardwell's recorded weekly availability for work at Davis Polk, Bates stamped DPW\_SDNY-000143599.

**Other Materials**

14. Attached as Exhibit 13 is a true and correct copy of a slide deck presented to first-year associates by Kathleen Ferrell and Renee DeSantis, dated October 6, 2014, Bates stamped DPW\_SDNY-000164486.

15. Attached as Exhibit 14 is a true and correct copy of an email from Alicia Fabe to Andi Zhao, dated June 4, 2015, Bates stamped DPW\_SDNY-000164478.

16. Attached as Exhibit 15 is a true and correct copy of an email chain between, *inter alia*, Andrew Gehring and the [vance@davispolk.com](mailto:vance@davispolk.com) group list, dated June 29, 2015, Bates stamped DPW\_SDNY-000081538.

17. Attached as Exhibit 16 is a true and correct copy of an email chain between, *inter alia*, Sophia Hudson and Eric Li, dated November 8, 2015, Bates stamped DPW\_SDNY-000095576–DPW\_SDNY-000095578.

18. Attached as Exhibit 17 is a true and correct copy of an email chain between Sophia Hudson and Rocio Klausen, dated November 9, 2015, Bates stamped DPW\_SDNY-000096002.

19. Attached as Exhibit 18 is a true and correct copy of an email chain between, *inter alia*, Connor Kuratek and Sophia Hudson, dated December 7, 2015, Bates stamped DPW\_SDNY-000093462–DPW\_SDNY-000093468.

20. Attached as Exhibit 19 is a true and correct copy of an email from Kaloma Cardwell to Connor Kuratek, dated December 28, 2015, Bates stamped DPW\_SDNY-000166121–DPW\_SDNY-000166123.

21. Attached as Exhibit 20 is a true and correct copy of the as-produced version of an excerpt of Kaloma Cardwell's journal dated on or about January 21, 2016, Bates stamped KCARDWELL019038–KCARDWELL019044.

22. Attached as Exhibit 21 is a true and correct copy of the as-produced version of text messages to and from Kaloma Cardwell, dated March 31, April 3, and October 29, 2017, and Bates stamped KCARDWELL025587 and KCARDWELL025615.

23. Attached as Exhibit 22 is a true and correct copy of an email from Carolina Fenner to various employees at Davis Polk, dated April 1, 2016, Bates stamped DPW\_SDNY-000045700.

24. Attached as Exhibit 23(a)–(b) are true and correct copies of

- a. an email from Alicia Fabe to Renee DeSantis, dated June 10, 2016, Bates stamped DPW\_SDNY-000140608, and
- b. the attachment to that email, a slide deck titled “Corporate Associate Development Update – BAG,” dated June 2016, Bates stamped DPW\_SDNY-000140609–DPW\_SDNY-000140632.

25. Attached as Exhibit 24 is a true and correct copy of an email chain between, *inter alia*, Alicia Fabe and Renee DeSantis, dated June 13, 2016, Bates stamped DPW\_SDNY-000140824.

26. Attached as Exhibit 25(a)–(b) are true and correct copies of

- a. an email from Alicia Fabe to herself, dated June 14, 2016, Bates stamped DPW\_SDNY-000164543, and

- b. the attachment to that email, a document titled “Draft Diversity Committee Agenda–Tuesday, June 14<sup>th</sup>,” dated June 14, 2016, Bates stamped DPW\_SDNY-000164544–DPW\_SDNY-000164545.

27. Attached as Exhibit 26 is a true and correct copy of an email chain between, *inter alia*, Rocio Clausen and Carolina Fenner, dated June 20, 2016, Bates stamped DPW\_SDNY-000141867.

28. Attached as Exhibit 27 is a true and correct copy of an email chain between Rocio Clausen and Joseph Hall, dated June 20, 2016, Bates stamped DPW\_SDNY-000141868.

29. Attached as Exhibit 28 is a true and correct copy of an email chain between, *inter alia*, Carolina Fenner and Rocio Clausen, dated June 21, 2016, Bates stamped DPW\_SDNY-000141390.

30. Attached as Exhibit 29 is a true and correct copy of an email from Renee DeSantis to Carolina Fenner, copying Rocio Clausen, dated June 22, 2016, Bates stamped DPW\_SDNY-000140831.

31. Attached as Exhibit 30 is a true and correct copy of an email chain between Alicia Fabe and Carolina Fenner, dated June 23, 2016, Bates stamped DPW\_SDNY-000165358.

32. Attached as Exhibit 31 is a true and correct copy of an email chain between, *inter alia*, Carolina Fenner and Kaloma Cardwell, dated July 22, 2016, Bates stamped DPW\_SDNY-000045710–DPW\_SDNY-00045711.

33. Attached as Exhibit 32 is a true and correct copy of an email chain between, *inter alia*, Carolina Fenner and Daniel Brass, dated July 22, 2016, Bates stamped DPW\_SDNY-000143350.

34. Attached as Exhibit 33 is a true and correct copy of an email from Kaloma Cardwell to Carolina Fenner, dated August 4, 2016, Bates stamped DPW\_SDNY-000105316.

35. Attached as Exhibit 34 is a true and correct copy of an email from John Butler to Harold Birnbaum and Brian Wolfe, dated August 4, 2016, Bates stamped DPW\_SDNY-000086014–DPW\_SDNY-000086016.

36. Attached as Exhibit 35 is a true and correct copy of an email chain between John Butler and Harold Birnbaum, copying Brian Wolfe, dated August 9, 2016, Bates stamped DPW\_SDNY-000086053.

37. Attached as Exhibit 36 is a true and correct copy of an email chain between Rocio Clausen, Jinsoo Kim, Meyer Dworkin, and Kenneth Steinberg, dated August 16, 2016, Bates stamped DPW\_SDNY-000144553–DPW\_SDNY-000144556.

38. Attached as Exhibit 37 is a true and correct copy of an email from Rocio Clausen to Kaloma Cardwell, dated September 6, 2016, Bates stamped DPW\_SDNY-000046514.

39. Attached as Exhibit 38 is a true and correct copy of an email from Carolina Fenner to Leonard Kreynin, dated September 27, 2016, Bates stamped DPW\_SDNY-000134245.

40. Attached as Exhibit 39 is a true and correct copy of an email chain between Kaloma Cardwell and Faizan Tukdi, dated September 29, 2016, Bates stamped DPW\_SDNY-000084698–DPW\_SDNY-000084701.

41. Attached as Exhibit 40 is a true and correct copy of an email chain between Kaloma Cardwell and Carolina Fenner, copying Christine Maloney, dated September 29, 2016, Bates stamped DPW\_SDNY-000105318.

42. Attached as Exhibit 41 is a true and correct copy of an email from Carolina Fenner to Leonard Kreynin, dated November 14, 2016, Bates stamped DPW\_SDNY-000137552.

43. Attached as Exhibit 42 is a true and correct copy of the as-produced version of an email from Kaloma Cardwell to John Powell, dated January 3, 2017, Bates stamped KCARDWELL001786.

44. Attached as Exhibit 43 is a true and correct copy of a list of an index to a binder containing reviews of certain high-, mid-, and low-performing associates that was delivered to Davis Polk partner Kyoko Takahashi Lin, a member of the Diversity Committee, on or around January 9, 2017, Bates stamped DPW\_SDNY-000144029.

45. Attached as Exhibit 44 is a true and correct copy of an email from Carolina Fenner to Leonard Kreynin, dated January 19, 2017, Bates stamped DPW\_SDNY-000137555.

46. Attached as Exhibit 45 is a true and correct copy of an email chain between, *inter alia*, Kaloma Cardwell and Sharon Katz, dated March 3, 2017, Bates stamped DPW\_SDNY-000084704–DPW\_SDNY-000084707, which includes a true and correct copy of an email from Kaloma Cardwell to Carey Dunne, dated December 5, 2016.

47. Attached as Exhibit 46 is a true and correct copy of a cover email from Alicia Fabe to diversity.comm@davispolk.com, dated March 7, 2017, Bates stamped DPW\_SDNY-000143345–DPW\_SDNY-000143346.

48. Attached as Exhibit 47 is a true and correct copy of an email chain between, *inter alia*, Marc Williams, Francesca Campbell, and Kaloma Cardwell, dated March 24, 2017, Bates stamped DPW\_SDNY-000051958–DPW\_SDNY-000051970.

49. Attached as Exhibit 48(a)–(b) are true and correct copies of

- a. the as-produced version of a cover email from Kaloma Cardwell to himself, dated March 29, 2017, Bates stamped KCARDWELL003291, and



- b. the as-produced version of the attachment, a document written with the subject “Notes of the meeting that took place on 3/29/17 between 3:00pm and 4:05pm at the office of Davis Polk (RM: 1904),” Bates stamped KCARDWELL003292–KCARDWELL003294.

50. Attached as Exhibit 49 is a true and correct copy of an email chain between, *inter alia*, Kaloma Cardwell and Louis Goldberg, dated May 3, 2017, Bates stamped DPW\_SDNY-000138823–DPW\_SDNY-000138825.

51. Attached as Exhibit 50 is a true and correct copy of an email chain between Kaloma Cardwell and John Bick, dated May 3, 2017, Bates stamped DPW\_SDNY-000097880.

52. Attached as Exhibit 51 is a true and correct copy of an email from Kaloma Cardwell to Louis Goldberg, dated May 22, 2017, Bates stamped DPW\_SDNY-000052002–DPW\_SDNY-000052004.

53. Attached as Exhibits 52(a)–(d) are true and correct copies of

- a. an email from Kaloma Cardwell to Louis Goldberg, dated May 31, 2017, Bates stamped DPW\_SDNY-000138793,
- b. an email attachment to Exhibit 52(a), from Kaloma Cardwell to Louis Goldberg, dated May 31, 2017, Bates stamped DPW\_SDNY-000138794–DPW\_SDNY-000138976,
- c. the as-filed, published client memorandum, entitled “Just How Iron-Clad are Contractual Rights to Payment On Preferred Stock of a Solvent Company,” dated June 6, 2017 (Exhibit 16 to the Third Amended Complaint, excluding Complaint slip sheet), and



- d. a redline comparison between the text in the documents Bates stamped DPW\_SDNY-0000138794–DPW\_SDNY-0000138796 (Exhibit 52(b)) and the as-filed, published client memorandum (Exhibit 52(c)).

54. Attached as Exhibits 53(a)–(b) are true and correct copies of

- a. an email from [ShareScan@ad.dpw.com](mailto:ShareScan@ad.dpw.com) to Sharon Crane, dated May 26, 2017, Bates stamped DPW\_SDNY-00141984, and
- b. the attachment to that email, which is a true and correct copy of a scan of a file for Mr. Cardwell, Bates stamped DPW\_SDNY-000141985–DPW\_SDNY-000142018.

55. Attached as Exhibit 54 is a true and correct copy of an email chain between, *inter alia*, Louis Goldberg and Harold Birnbaum, dated June 1, 2017, Bates stamped DPW\_SDNY-000086118.

56. Attached as Exhibit 55 is a true and correct copy of an email from Kaloma Cardwell to Louis Goldberg and Soren Kreider, dated June 6, 2017, Bates stamped DPW\_SDNY-000045238.

57. Attached as Exhibit 56 is a true and correct copy of an email chain between Louis Goldberg, Kaloma Cardwell, and Soren Kreider, dated June 7, 2017, Bates stamped DPW\_SDNY-000045239.

58. Attached as Exhibit 57 is a true and correct copy of an email chain between Louis Goldberg and Harold Birnbaum, dated June 7, 2017, Bates stamped DPW\_SDNY-000139494.

59. Attached as Exhibit 58 is a true and correct copy of an email chain between, *inter alia*, Louis Goldberg and Phillip Mills, dated June 14, 2017, Bates stamped DPW\_SDNY-000099113–DPW\_SDNY-000099114.

60. Attached as Exhibit 59 is a true and correct copy of an email chain between Kaloma Cardwell and Phillip Mills, dated June 16, 2017, Bates stamped DPW\_SDNY-000084998–DPW\_SDNY-000084999.

61. Attached as Exhibit 60 is a true and correct copy of an email chain between, *inter alia*, Phillip Mills and Louis Goldberg, dated June 20, 2017, Bates stamped DPW\_SDNY-000097890.

62. Attached as Exhibit 61 is a true and correct copy of an email chain between Tom Reid and Kaloma Cardwell, dated August 1, 2017, Bates stamped DPW\_SDNY-000098096.

63. Attached as Exhibit 62 is a true and correct copy of the as-produced version of a Charge of Discrimination sent by Kaloma Cardwell to the Equal Employment Opportunity Commission on August 3, 2017, Bates stamped KCARDWELL011422–KCARDWELL011428.

64. Attached as Exhibit 63 is a true and correct copy of the as-produced version of an email chain between, *inter alia*, Kaloma Cardwell and Bobbie King, dated September 1, 2017, Bates stamped KCARDWELL015618–KCARDWELL015620.

65. Attached as Exhibit 64 is a true and correct copy of an email chain between, *inter alia*, John Amorosi and Kaloma Cardwell, dated September 12, 2017, Bates stamped DPW\_SDNY-000005551–DPW\_SDNY-000005552.

66. Attached as Exhibit 65 is a true and correct copy of an email from Bret Stager to John Amorosi and others, copying Kaloma Cardwell, dated September 13, 2017, Bates stamped DPW\_SDNY-000000866–DPW\_SDNY-000000869.

67. Attached as Exhibit 66 is a true and correct copy of an email chain between Kaloma Cardwell, John Amorosi, and Trevor Kiviat, dated September 17, 2017, Bates stamped DPW\_SDNY-000005803–DPW\_SDNY-000005806.

68. Attached as Exhibit 67 is a true and correct copy of an email chain between, *inter alia*, Brian Smarsh and Kaloma Cardwell, dated September 19, 2017, Bates stamped DPW\_SDNY-000006873–DPW\_SDNY-000006876.

69. Attached as Exhibit 68 is a true and correct copy of an email chain between, *inter alia*, William H. Aaronson, Harold Birnbaum, and Louis Goldberg, copying Daniel Brass, dated February 6, 2018, Bates stamped DPW\_SDNY-000085152.

70. Attached as Exhibit 69 is a true and correct copy of the as-produced version of an audio recording taken by Kaloma Cardwell during his February 8, 2018 meeting with Oliver Smith and Louis Goldberg, Bates stamped CARDWELL001521.

71. Attached as Exhibit 70 is a true and correct copy of an email from Kaloma Cardwell to Renee DeSantis, dated April 9, 2018, Bates stamped DPW\_SDNY-000140804.

72. Attached as Exhibit 71 is a true and correct copy of an email between, *inter alia*, Susanna Buergel and Luis Hansen, dated August 17, 2018.

73. Attached as Exhibit 72 is a true and correct copy of a letter from Bruce Birenboim to Siaka Paasewe, dated November 19, 2019.

74. Attached as Exhibit 73 is a true and correct copy of a Review of Case File No. 10190523 at the New York State Division of Human Rights, dated November 20, 2019.

75. Attached as Exhibit 74 is a true and correct copy of the as-served version of Plaintiff's Third Amended Initial Disclosures, dated August 21, 2020 (excluding Exhibit A thereto).

76. Attached as Exhibit 75 is a true and correct copy of Defendants' Responses and Objections to Plaintiff's Requests for Admission, dated May 17, 2021.

77. Attached as Exhibit 76(a)–(b) are true and correct copies of printouts from the New York State Unified Court System website’s attorney search page, showing results for “Kaloma Cardwell,” as of (a) November 27, 2020 and (b) December 1, 2021.

**Reviews for the Twelve Associates**

78. Attached as Exhibit 77 is a true and correct copy of a chart showing the dates of hire and termination of the associates anonymized, for purposes of this litigation, as Associates 1–12 (the “Twelve Associates”), Bates stamped DPW\_SDNY-000168017.

79. Attached as Exhibits 78(a)–(l) are true and correct copies of performance reviews for the Twelve Associates, completed between those associates’ start dates at the Firm and Mr. Cardwell’s last day at the Firm (August 10, 2018), comprising the following Bates ranges:

- a. As to Associate 1, Bates numbers DPW\_SDNY-000165612–661.
- b. As to Associate 2, Bates numbers DPW\_SDNY-000165904–934.
- c. As to Associate 3, Bates numbers DPW\_SDNY-000165744–807.
- d. As to Associate 4, Bates numbers DPW\_SDNY-000165734–743.
- e. As to Associate 5, Bates numbers DPW\_SDNY-000166042–044 and DPW\_SDNY-000166046–076.
- f. As to Associate 6, Bates numbers DPW\_SDNY-165808–836, DPW\_SDNY-000165838–844, and DPW\_SDNY-000165847–848.
- g. As to Associate 7, Bates numbers DPW\_SDNY-000165935–010.
- h. As to Associate 8, Bates numbers DPW\_SDNY-000165663–691 and DPW\_SDNY-000165694–699.
- i. As to Associate 9, Bates numbers DPW\_SDNY-000165526–611.
- j. As to Associate 10, Bates numbers DPW\_SDNY-00166011–041.

k. As to Associate 11, Bates numbers DPW\_SDNY-000165700–733.

l. As to Associate 12, Bates numbers DPW\_SDNY-000165851–903.

80. Attached as Exhibit 79 is a true and correct copy of a performance review for one of the Twelve Associates, dated October 16, 2018, Bates stamped DPW\_SDNY-000165692–DPW\_SDNY-000165693.

### **Rankings**

81. Davis Polk ranked

- a. within the top “most prestigious law firms” in 2021, according to Vault;<sup>1</sup>
- b. fourth by “highest representation of minorities in their equity partnerships” among firms with 601+ attorneys, in an August 2021 Law360 report, with 14.7% of the Firm’s equity partners identifying as lawyers of color;<sup>2</sup> and
- c. within the top 26 firms on *The American Lawyer*’s Diversity Scorecard every year for the last ten years.<sup>3</sup>

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1 See Buerger Decl. Ex. 80 (Top Law Firm Rankings: Vault Law 100, <https://firsthand.co/best-companies-to-work-for/law/top-100-law-firms-rankings> (last accessed Dec. 2, 2021)).

2 See Buerger Decl. Ex. 81 (Gerald Schifman, *Law360’s Diversity Snapshot: How Your Firm Stacks Up*, Law360, <https://media2.mofo.com/documents/210816-law-360-diversity-snapshot.pdf> (last accessed Dec. 2, 2021)).

3 See Buerger Decl. Ex. 82 (<https://www.law.com/americanlawyer/2021/05/24/the-2021-diversity-scorecard-ranking-the-legal-industry/> (last accessed Dec. 2, 2021)), (<https://www.law.com/americanlawyer/2020/05/26/the-2020-diversity-scorecard-rankings-and-demographic-leaders/> (last accessed Nov. 19, 2021)), (<https://www.law.com/americanlawyer/2019/05/28/the-2019-diversity-scorecard/?tokenvalue=308B0C8E-4961-47B5-8A82-7EB5141A3EEE> (last accessed Nov. 19, 2021)), (<https://www.law.com/americanlawyer/2018/05/29/the-2018-diversity-scorecard-the-rankings/> (last accessed Nov. 22, 2021)), (<https://www.law.com/americanlawyer/almID/1202786839599/?tokenvalue=59E21C9C-04B5-4C37-8EE7-4C63ABB4D769/&slreturn=20211022160947> (last accessed Nov. 22, 2021)), (<https://www.law.com/americanlawyer/almID/1202758280656/> (last accessed Nov. 22, 2021)), (<https://www.law.com/americanlawyer/almID/1202727574483/> (last accessed Nov. 19, 2021)), (<https://www.law.com/americanlawyer/almID/1202657037862/Diversity-Scorecard-How-the-Firms-Rate/> (last accessed Nov. 19, 2021)), (<https://www.law.com/americanlawyer/almID/1202600856240/?germane=1202600856240&id=1202600648878> (last accessed 11/29/2021)), and (<https://www.law.com/americanlawyer/almID/1202555459955/> (last accessed 11/29/2021)).

- d. Attached as Exhibits 80–82 to this declaration are copies of the press reports corroborating the information above, sources for which I describe in the footnotes.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
December 3, 2021

/s/ Susanna M. Buerger

Susanna M. Buerger